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## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12VAC30-90-41
<b>Regulation title</b>	Methods and Standards for Establishing Payment Rates—Long Term Care Services
<b>Action title</b>	Increase in Nursing Home Rates
<b>Document preparation date</b>	

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

Chapter 4, Item 326 YY of the *2004 Acts of Assembly* mandated that the Department of Medical Assistance Services (DMAS) increase the total per diem payment to each nursing home by \$3 per recipient per day, effective July 1, 2005, through June 30, 2006. Effective July 1, 2006, the increase of \$3 per recipient per day will be adjusted for one year's inflation and shall be allocated between the direct care and indirect care ceilings for nursing facilities until ceilings are rebased using cost report data from fiscal years ending in calendar year 2006 or later.

Nursing facilities are reimbursed for providing services to Medicaid recipients on a per diem basis. Medicaid per diem rates are calculated prospectively, based in part, upon cost settled nursing facility direct and indirect operating costs. Per diem direct and indirect operating payment rates are subject to payment ceilings; facilities are paid the lower of their costs or the ceilings. Payment ceilings are rebased every two years and remain in effect until the next rebasing period.

Nursing facility prospective operating ceilings and prospective operating rates are adjusted for inflation on an annual basis, using projected inflation factors calculated by Global Insight, Inc., based upon Virginia-specific nursing facility wage data. As a budget savings measure, the General Assembly limited the amount of inflation applied to nursing facility rates in state fiscal years 2003 and 2004.

The suggested regulatory action will increase the total payment to each nursing facility by \$3 per recipient per day effective July 1, 2005. This payment will cease to be in effect July 1, 2006, at which time an increase of \$3 per recipient per day, adjusted for one year of inflation, will be allocated proportionally to the direct and indirect ceilings. In addition, effective July 1, 2006, when cost data that include time periods before July 1, 2005, are used to set facility specific rates, a portion of the per diem amounts identified above shall be allocated between the facility specific direct and indirect cost per day, prior to comparison to the ceilings.

**Statement of agency final action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

I hereby approve the foregoing Agency Background Document with the attached amended State Plan pages, Methods and Standards for Establishing Payment Rates—Long Term Care Services Nursing Facility Reimbursement Formula (Attachment 4.19-D (12 VAC 30-90-41)) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act and is full, true, and correctly dated.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Patrick W. Finnerty, Director  
Dept. of Medical Assistance Services

**Legal basis**

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid

authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The purpose of this action is to increase nursing facility payments made on behalf of Medicaid recipients to nursing facilities. This regulatory action is not expected to have a direct impact on the health, safety, or welfare of citizens.

### Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

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DMAS expects this rule making action to be non-controversial because it would increase reimbursement to nursing facilities. The nursing home industry supported the budget and has worked with the agency to develop this regulation. The 2004 Appropriations Act specified in detail the parameters of this regulation and the cost of implementing this regulation was included in the appropriations.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

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The section of the State Plan for Medical Assistance affected by this suggested amendment is Methods and Standards for Establishing Payment Rates—Long Term Care Services Nursing Facility Reimbursement Formula (Attachment 4.19-D (12 VAC 30-90-41)).

Nursing facilities are reimbursed for providing services to Medicaid recipients on a per diem basis. Medicaid per diem rates are calculated prospectively, based upon cost settled nursing facility direct and indirect care Medicaid-allowable costs that are submitted to the DMAS within 150 days of each provider's fiscal year end. The direct and indirect portions of the prospective

per diem rates are subject to ceilings, and nursing facilities are paid the lower of their cost or the ceiling. Ceilings are rebased every two years, using the most recent cost settled nursing facility data available on September 1, prior to the start of the state fiscal year in which rebased rates go into effect.

Nursing facility data used to rebase the ceilings may be two to three years old, and data to set prospective per diem rates may be one to two years old, due to the lag between the end of the provider fiscal year, the date of submission to DMAS, and the time to complete the cost settlement process. Therefore, nursing facility rates are inflated annually to the prospective payment period using projected inflation factors calculated by Global Insight, Inc., which are based upon Virginia-specific nursing facility costs. As a budget savings measure, the General Assembly reduced the amount of inflation applied to nursing facility rates in state fiscal years 2003 and 2004.

Effective July 1, 2005, through June 30, 2006, the total payment to each nursing facility shall be increased by \$3 per day per recipient. Effective July 1, 2006, an increase of \$3 per day per recipient, adjusted for one year of inflation, shall be allocated between the direct and indirect care ceilings until the time that ceilings are rebased using cost report data from provider fiscal years ending in 2006 or later. The per recipient amount of \$1.68 adjusted for inflation shall be allocated to the direct ceiling, and \$1.32 adjusted for inflation shall be allocated to the indirect ceiling.

In addition, effective July 1, 2006, when cost data that include time periods before July 1, 2005, are used to set facility specific rates, the per diem amounts identified above, shall be added to direct and indirect cost per day for the percent of provider cost report's patient days occurring before July 1, 2005, prior to comparison to the ceilings.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
  - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
  - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

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The primary advantage to the public of the regulatory change is that it may contribute to slowing the growth of cost inflation for nursing facility care provided to individuals who do not have insurance but do not qualify for Medicaid and for individuals with commercial insurance. Medicaid recipients comprise, on average, approximately sixty percent of the residents of nursing facilities that accept Medicaid, but Medicaid payment rates tend to be lower than rates paid by Medicare and commercial insurers. Low Medicaid payment rates to nursing facilities may act as a disincentive to NFs serving Medicaid recipients and may have a negative impact on providers' ability to deliver high quality care. In addition, low Medicaid reimbursement rates may encourage nursing facilities to charge higher rates to commercial payers and uninsured residents, in order to cross-subsidize, or shift, the cost of providing care to Medicaid recipients. .

The advantage to NF providers is that their rates of reimbursement will be increased. There are no advantages or disadvantages directly to Medicaid recipients or their families.

There are no disadvantages to the public in the implementation of these suggested changes, and the Department projects no negative issues in implementing these proposed changes.

**Financial impact**

*Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	For the second year, the estimated fiscal impact for DMAS to implement this regulation is \$19,481,974 total funds (\$9,740,987 GF). Costs in subsequent years may be higher due the application of inflation to the \$3 per recipient per day amount.
<b>Projected cost of the regulation on localities</b>	No costs to localities are projected as a result of the regulation.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Nursing facilities that serve Medicaid recipients will be affected by the regulation. Medicaid recipients in need of nursing facility care may be affected by the regulation if an increase of \$3 per recipient per day causes NFs to accept more Medicaid patients.
<b>Agency’s best estimate of the number of such entities that will be affected</b>	Approximately 265 nursing facilities will be affected by the regulation. Medicaid nursing facility utilization is measured in bed days, rather than by the number of recipients served. It is possible to estimate the number of recipients by dividing the total number of bed days by 365 days, although recipients may have nursing facility stays that are less than or greater than one year. The number of recipients with stays less than or greater than one year is unknown. If all recipients have stays of one year, the number served would be approximately 17,000, based on calendar year 2002 cost report data.
<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	None

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

The Appropriations Act mandates the action; there are no alternatives.

**Impact on family**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

This regulatory action will not have any negative effects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities. This proposed action will more likely be supportive to the family institution as it adopts a single set of rules for determining Medicaid eligibility for children and their parents.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC 30-90-41	12VAC 30-90-41.J.	None	<p>Effective July 1, 2005 through June 30, 2006 increase nursing facility per diem payments by \$3 per day, in order to increase payments to nursing facilities.</p> <p>Effective July 1, 2006 until ceilings are rebased using cost report data from fiscal years ending in the calendar year 2006 or later: 1) increase direct ceilings by \$1.68 adjusted for appropriate inflation and indirect ceilings by \$1.32 adjusted for appropriate inflation and, 2) increase direct and indirect costs per day by the same amount prior to comparison to the ceilings for days in the provider's cost reporting period that fall before July 1, 2005. The affect of this change will be to increase payments but maintain the relationship between provider costs and payment ceilings.</p>